

ORIGINAL

Before the
SURFACE TRANSPORTATION BOARD



Finance Docket No. 35412

MIDDLETOWN & NEW JERSEY RAILROAD, LLC--LEASE AND
OPERATION EXEMPTION--NORFOLK SOUTHERN RAILWAY COMPANY

MOTION TO STRIKE

ENTERED
Office of Proceedings

JUN 28 2012

Part of
Public Record

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Attorney for Samuel J. Nasca

June 28, 2012

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MOTION TO STRIKE

Samuel J. Nasca,^{1/} for and on behalf of United Transportation Union-New York State Legislative Board (UTU-NY), moves the Surface Transportation Board (STB, or Board), that the STB strike a portion of the Reply to Petition to Reopen, filed June 8, 2012, by Middletown & New Jersey Railroad, LLC (M&NJ).

The portion of the June 8, 2012 Reply which should be stricken is Exhibit 1 thereto, identified as "an updated Interchange Report," consisting of 21 pages, and the prefatory material commencing with the second full paragraph of the M&NJ Reply, at p. 6, and extending to the end of the first paragraph at p. 7. Embraced in this motion to strike is M&NJ's proffered material from You Tube video. (M&NJ Reply, 6).

^{1/} New York State Legislative Director for United Transportation Union, with offices at 35 Fuller Road, Albany NY 12205.

ARGUMENT

1. The matters sought to be stricken are not accompanied by a motion for leave to file, and should not be treated as evidence in passing upon the UTU-NY petition to reopen, filed May 22, 2012, especially when contested.

2. The Board previously in this proceeding has stricken material improperly introduced by M&NJ at a late stage. See: Decision, pp. 3, 6 (served May 2, 2012). The same course should be followed here. Moreover, the "updated interchange report," apparently comes from NSR data which is neither authenticated by Railinc personnel, nor by NSR personnel, yet NSR is otherwise an active participant in this proceeding; and loaded car interchange does not establish a transportation purpose. UTU-NY disagrees with the STB's finding that Railinc (controlled by AAR) is a "disinterested third party" (Decision, supra at p. 4).

3. The legal basis suggested by M&NJ for relevance is the flawed claim by M&NJ that it was a "carrier" or "common carrier" at the time it filed its notice of exemption August 31, 2010. Even assuming, arguendo, such a factual basis, which is challenged, the statutory requirement is a greater "rail carrier providing transportation subject to the jurisdiction of the Board..." 49 U.S.C. §10902. Cars set out or picked up from the M&NJ at Middletown, prior to acquisition of the disconnected NSR leased lines, have not been shown by M&NJ to be other than for storage purposes.

CONCLUSION

The Board should strike the M&NJ 's Reply, filed June 8, 2012, to the extent requested, supra, p. 2, 2nd para.

Respectfully submitted,



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Certificate of Service

I hereby certify I have served a copy of the foregoing upon all parties of record by first class mail postage-prepaid.

Washington DC



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